

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 3113 of 2006
Date of Decision: 9.03.2007

Narinder Singh Chauhan

...Petitioner

Vs.

Jasbir Singh & Ors.

..Respondents

CORAM: HON'BLE MR.JUSTICE VINOD K.SHARMA

Present: Mr.Arun Jain and Mr.Vijay Sharma, Advocates,
for the petitioner.

Mr.Arun Palli, Advocate,
for respondents No.1 and 2.

Vinod K. Sharma, J (Oral)

By way of present revision petition the challenge is to the order passed by the Civil Judge (Senior Division), Patiala vide which objection petition filed on behalf of the petitioner has been ordered to be dismissed.

The respondent-decree holders had filed a suit for declaration and possession of half share of plot No.14-A, Model Town, Patiala. The said suit was dismissed by the learned Trial Court on 24.1.1980. However, the appeal filed against the said judgment and decree was accepted by the learned Additional District Judge, Patiala vide judgment and decree dated

21.9.1983. The said order was challenged before this Court as well as the Hon'ble Supreme Court and has attained finality as the appeal as well as Special Leave Petition against the order passed by the learned Additional District Judge stand dismissed.

The petitioner as well as Karminder Singh and Manjit Kaur filed two separate objection petitions which were disposed of by a common order. Karminder Singh and Smt. Manjit Kaur challenged the order impugned in the present revision petition by filing CR No.2452 of 2006. The said revision petition was disposed of by a consent order on 11.5.2006. The order passed in CR No. 2452 of 2006 reads as under:-

“Heard.

During the course of the arguments it was agreed between the parties that the Executing Court, which is seized of the matter, be directed to appoint some senior Revenue Officer to demarcate and partition the share of the decree holder within one month from the date of appointment of the Officer and thereafter, execution be given effect to in accordance with law. As regards the claim of other objector viz. Amarjot Kaur, the Executing Court may pass appropriate order after giving opportunity of being heard to all concerned including the present petitioners. In the meanwhile, no coercive measures be taken.

Ordered accordingly.

Petition stands disposed of’

One Dilbagh Singh son of Sukh Lal Singh claiming himself to

be the tenant under the Judgment Debtors also filed an objection petition against the judgment and decree. The said objections were dismissed and the appeal filed against the said order met with the same fate. Those orders were challenged by Dilbagh Singh in this Court by filing CR No.6226 of 2006 which was also dismissed on 27.11.2006. The objections filed by the petitioner as well as Karminder Singh and Smt.Manjit Kaur who drew their title through Smt.Gur Partap Kaur were dismissed by the Executing Court by observing as under:-

“9. I have given my careful consideration to the rival submissions and gone through the case law relied upon by learned counsel for the decree holders. It is not disputed that suit of the decree holder Jasbirinder Singh and Tejinder Singh was dismissed by the trial court and the appeal was accepted vide judgment dated 21.9.1983. The plaintiffs/ decree holders were held entitled to possession of half share of the plot in dispute on payment of Rs.4,500/-. The decree was against Gurpartap Kaur, defendant. Now the judgment debtors/objectors are children of Gurpartap Kaur, original defendant. The objectors have claimed the possession to the extent of half share but the decree holder has produced on record copy of the award dated 9.3.1987 vide which Amarjot Kaur was held owner of half share. Amarjot Kaur was also held in possession of half share. The award was made rule of the court by the court of learned Addl. District Judge, Patiala, vide order dated 26.4.1990. As the judgment debtors have already

sold their half share to Amarjot Kaur, award regarding this sale was also passed in favour of Amarjot Kaur. The award was made rule of the court. Now, Amarjot Kaur has become owner of half share. The decree holders are co-sharers to the extent of half share. As such, the objections petitioners are no more remains the co-sharers in the suit property. They have no interest in the suit property. They are no more co-sharers. Therefore the objection petitions of all the judgment debtors are without merit and stands dismissed.”

Mr. Arun Jain and Mr. Vijay Sharma, learned counsel appearing on behalf of the petitioner did not dispute that the decree holders are entitled to half share in the property in view of the decree in their favour. The impugned order has been challenged on the ground that as the decree was for half share it was not open to the Executing Court to have allowed the said application as only symbolic possession could be given and the decree holders ought to have been relegated to their remedy of filing a suit for partition to get their share demarcated out of the plot in dispute. In support of this contention, learned counsel for the petitioner placed reliance on the judgment of this Court in the case of **Kashmir Singh Vs. Tana & Ors. 2001 (1) Civil Court Cases 276** wherein this court was pleased to lay down that in case of decree for joint possession the procedure laid down under Order 21 Rule 35(2) of the Code of Civil Procedure was required to be followed and the only remedy available with the decree holders was to file a suit for possession. Reliance was also placed on the judgment of this Court in the case of **Ram Singh Vs. Gurnam Singh and others 1990 (1)**

Recent Revenue Reports 169 which is also to the same effect.

Learned counsel for the petitioner further relied upon the judgment of Hon'ble Andhra Pradesh High Court in the case of **Hasimathunnisa Begum Vs. Vithal Rao Gangaji and another AIR 1979 Andhra Pradesh 273** wherein it was held that the decree holder is not entitled to separate possession as his share when the decree is for joint possession.

Mr. Arun Palli, learned counsel appearing on behalf of respondents No.1 and 2 vehemently contended that the present revision petition deserves to be dismissed in view of the orders passed by this Court in CR No.2452 of 2006 decided on 11.5.2006 which was disposed of with the consent of the parties. Learned counsel for the respondent further contended that the award passed by the learned Arbitrator was made rule of the Court by the learned Additional District Judge, Patiala in Civil Misc. Appeal No.48T of 19.2.1988 decided on 26.4.1990. The contention, therefore, was that once the petitioner has divested himself of the title of the property in dispute he could no longer be said to be the co-owner so as to claim that the decree can be executed only by filing a suit for partition.

This contention is primarily based on the fact that Ms.Amarjot Kaur in whose favour the award was passed by the Arbitrator which has been made rule of the court had already consented to the execution of the decree by demarcating the share to which decree holders would be entitled to. This contention of the learned counsel for the respondents was challenged by the learned counsel for the petitioner merely on the ground that the said award passed by the Arbitrator and decree in favour of Amarjot

Kaur was subject-matter of challenge in the suit. However, it is admitted that till date no stay has been granted against the said award which has been made rule of the Court, thus, divesting the petitioner herein of the interest in the property, if any.

I have considered the arguments raised by the learned counsel for the parties and find no force in the contentions raised by the learned counsel for the petitioner. Though it cannot be disputed that a decree for joint possession cannot be executed by handing over the possession of the property and the remedy available with the party is to apply for partition, however, this proposition of law cannot be applied to the facts of the present case as in the present case the petitioners have no interest in the property as the same stands transferred to Amarjot Kaur and objections filed by her to the execution have been disposed of. It may further be noticed that in the present case Karminster Singh and Manjit Kaur have already accepted the execution of the decree by seeking partition thereof in view of the order passed by this Court in CR No.2452 of 2006. The petitioners do not have any independent right from that of Karminster Singh and Manjit Kaur as they drew their title through Smt.Gurpartap Kaur.

In view of what has been stated above, I find no force in the present revision petition which is accordingly dismissed.

(Vinod K.Sharma)
Judge

9.03.2007
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